

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HILL DESIGN, INC.,

Opposer,

v.

ROYLCO, INC.

Applicant.

Applicant: Roylco, Inc.

Marks: BROWN BAG CRAFTS
BROWN BAG CRAFTS and DESIGN

Opposition No:

Serial Nos: 76/299,860 and 76/299,861

Atty. Docket No: 029102.00006



01-26-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #78

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant is the owner of the marks BROWN BAG CRAFTS, BROWN BAG CRAFTS and DESIGN, and the application serial nos. 76/299,860 and 76/299,861. On September 16, 2003, applicant's applications were published for opposition. On November, 17, 2003 Opposer filed a Notice of Opposition. Applicant is filing its Answer within forty days from the mailing of the Notice of Opposition. Applicant believes that Opposer does not have sufficient grounds on which to oppose its application and sets forth its Answer in numbered paragraphs which correspond to those in the Notice of Opposition below:

1. Applicant denies that Opposer has established a strong family of marks. Applicant is without sufficient information or knowledge to establish a belief as to whether the remaining allegations of paragraph 1 are true or false and therefore denies same.

2. Applicant incorporates its affirmative defenses and counterclaims herein and is without sufficient information or knowledge to establish a belief as to whether the remaining allegations of paragraph 2 are true or false and therefore denies same.

3. Applicant is without sufficient information or knowledge to establish a belief as to whether the allegations of this paragraph are true or false and therefore denies same.

4. Applicant is without sufficient information or knowledge to establish a belief as to whether the allegations of this paragraph are true or false and therefore denies same.

5. Applicant is without sufficient information or knowledge to establish a belief as to whether the allegations of this paragraph are true or false and therefore denies same.

6. Denied.

7. Admitted.

8. Denied as to the allegation that the design elements of applicant's second mark appears to consist solely in presenting particular letters of the working in color. The remaining allegations of this paragraph are admitted.

9. Admitted.

10. Applicant is without sufficient information or knowledge to establish a belief as to whether the allegations of this paragraph are true or false and therefore denies same.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

FIRST AFFIRMATIVE DEFENSE AND COUNTERCLAIM

16. After having knowledge of the use and development of Applicant's trademark and service mark rights, Opposer filed registration 78/176,372 claiming national use of the mark BROWN BAG.

17. By Opposer's own allegations, Opposer believes that the goods of the Opposer and the Applicant are likely to cause confusion with the goods of the Applicant. (Opposition paragraphs 13 and 14).

18. Since, Opposer knew of Applicant's rights and believes that such rights are likelihood to be confused with Applicant's, Opposer's Registration 78/176,372 was fraudulently filed.

19. Opposer's therefore, should not be allowed to maintain this opposition for committing fraud on the Trademark Office and amounts to unclean hands.

20. Application serial no. 78/176,372 should be cancelled.

SECOND AFFIRMATIVE DEFENSE AND COUNTERCLAIM

21. Applicant incorporates paragraphs 1 through 20 herein.

22. After having knowledge of the use and development of Applicant's trademark and service mark rights, Opposer filed registration 78/212,170 claiming national use of the mark BROWN BAG COOKIE ART.

23. By Opposer's own allegations, Opposer believes that the goods of the Opposer and the Applicant are likelihood to cause confusion. (Opposition paragraphs 13 and 14).

24. Since Opposer knew of Applicant's rights and believes that such rights are likelihood of confusion with Applicant's, Opposer's Registration 78/212,170 was fraudulently filed.

25. Opposer's therefore should not be allowed to maintain this opposition for committing fraud on the Trademark Office and application serial no. 78/212,170 should be cancelled.

THIRD AFFIRMATIVE DEFENSE

26. Applicant incorporates paragraphs 1 through 25 herein.
27. Applicant incorporates by reference the allegations of paragraphs 1 through 19 as if expressly plead herein.
28. Opposer seeks to support its opposition allegations by illustrating that registrations or applications have been previously filed with the Trademark Office.
29. Opposer lists serial no. 78/212,170 to support its rights and lists "Previous Reg. No. 1,904,477 in support of its rights.
30. Registration No 1,904,477 was cancelled on July 20, 2002 due to Opposer's failure to comply with the requirements of Section 8.
31. Opposer's failure to comply with section 8 is Opposer's failure to provide the affidavit attesting that the mark BROWN BAG COOKIE ART was currently being used in commerce.
32. Opposer also failed to show why any non-use was excusable.
33. Opposer lists "Previous Reg. No. 1,955,388" in support of its rights.
34. Registration No 1,955,388 was cancelled on November 9, 2002 due to Opposer's failure to comply with the requirements of Section 8.
35. Opposer's failure to comply with section 8 is Opposer's failure to provide the affidavit attesting that the mark BROWN BAG PAPER ART was currently being used in commerce.
36. Opposer also failed to show why any non-use was excusable.

37. Since Opposer seeks to support its opposition with a cancelled registration, Opposer wishes to mislead the TTAB and such actions amount to unclean hands, fraud and an abuse of process.

WHEREFORE, Applicant prays that the Board will find that Opposer has no grounds for opposing the registration of Applicant's mark and will dismiss this Opposition with prejudice, cancel applications 78/176,372 and 78/128,170 and award costs to the Applicant.

Two copies of this Answer are enclosed herein and Applicant certifies below that a copy of this Answer has been served upon the attorneys for the Opposer.

Respectfully submitted,

McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, SC 29211
864-799-9800

By: Allen F. Creighton
Allen F. Creighton
Attorney for the Applicant

Date: 1/19/04

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to U.S. Department of Commerce, Patent and Trademark Office, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on the date shown below.

Allen F. Creighton
Allen F. Creighton
Attorney for Applicant
January 19, 2004

CERTIFICATE OF SERVICE

I certify that I deposited a true copy of the foregoing Notice of Opposition with the U.S. Postal Service as first class mail, postage pre-paid, addressed to Opposer, Hill Design, Inc., namely, Garfield Goodrum, Hill Design, Inc., 631 Town Hill Road, Reading, VT 05062 on January 19, 2004.

Allen F. Creighton
Allen F. Creighton
Attorney for Applicant

MCNAIR LAW FIRM, P.A.

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January 19, 2004

VIA U. S. MAIL – FIRST CLASS, CERTIFIED

U. S. Department of Commerce
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513

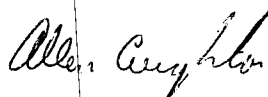
Re: Hill Design, Inc. v. Roylco, Inc.
Trademark Trial and Appeal Board
Opposition to Application Numbers 76/299,860 and 76/299,861
Our File: 029102.00006

Dear Sir:

Please find enclosed one original and one true copy of Roylco, Inc.'s Answer to Notice of Opposition in the above-referenced matter.

If you need anything further in connection with this matter, please do not hesitate to contact me.

Sincerely,



Allen F. Creighton

AFC:pz

Enclosure

cc: Perry Voisin (w/encl.)